IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2006

CORAM:

THE HONOURABLE MR.JUSTICE. S.ASHOK KUMAR

C.R.P.(PD).Nos.1570 and 1571 of 2004

& C.M.P.Nos.15693 to 15700 of 2005 and 16409 to 16414 of 2005

P.Rathinam .. Petitioner in both the C.R.Ps.
/Plaintiff

vs.

1. G.Palani Gounder (died)
2. P.Jagadeesan
3. R.Sakthivel
4. N.J.Sri Arul Kumaran

(Respondents 3 and 4 are impleaded as Legal Representatives of the deceased first respondent as per the order dated 25.10.2006 in C.M.P.Nos.15693 to 15700 of 2005 and 16409 to 16414 of 2005 - vide order in this Civil Revision Petitions itself) .. Respondents in C.R.P.No.1570 of 2004

1. P.Jagadeeswaran
2. Palani Gounder (died)
3. R.Sakthivel
4. N.J.Sri Arul Kumaran

(Respondents 3 and 4 are impleaded as Legal Representatives of the deceased first respondent as per the order dated 25.10.2006 in C.M.P.Nos.15693 to 15700 of 2005 and 16409 to 16414 of 2005 - vide order in this Civil Revision Petitions itself) .. Respondents in C.R.P.No.1571 of 2004

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Civil Revision Petition No.1570 of 2004 is filed against the order dated 26.7.2004 in I.A.No.156 of 2004 in O.S.No.89 of 2003 on the file of the Subordinate Judge's Court, Sankari.

Civil Revision Petition No.1571 of 2004 is filed against the order dated 6.7.2004 in I.A.No.120 of 2004 in O.S.No.5 of 2000 on the file of the Subordinate Judge's Court, Sankari.

For petitioner : Mr.P.Jagadeesan in both C.R.Ps.
For respondents : Mr.V.Manisekaran for RR-3 & 4 in both C.R.Ps.
Mr.T.L.Thirumalaisamy for R-2 in CRP.1570/04 and R-1in CRP.1571/04

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ORDER

C.M.P.Nos.15693 to 15700 of 2005 and 16409 to 16414 of 2005: It is seen from the records and submissions made by learned counsel on either side that pending both the Civil Revision Petitions, the first defendant in O.S.Nos.5 of 2000 and 89 of 2003 (i.e. the first respondent in C.R.P.No.1570 of 2004 and the second respondent in C.R.P.No.1571 of 2004) died. Naturally, the legal representatives of the deceased first defendant have to be impleaded. It is seen that pending C.R.Ps., both the petitioner and one of the legal representatives of the first defendant have filed these C.M.Ps. for (i) to condone the delay in filing the application to set aside the abatement caused due to the death of the first defendant, to condone the delay in filing the petition to bring on record the legal representative of the deceased first defendant, to set aside the abatement caused due to the death of the first defendant and to bring on record the respective parties as legal representatives of the deceased first defendant in both the Civil Revision Petitions. Since they are necessary parties to the suit which was filed for recording partition of properties and for permanent injunction, they have to be impleaded. Therefore, the legal representatives of the deceased first defendant shall be impleaded in these Civil Revision Petitions as parties. Accordingly, all these C.M.Ps. are allowed and R.Sakthivel and N.J.Sri Arul Kumaran are impleaded as third and fourth respondents in both the Civil Revision Petitions.

C.R.P.(PD).No.1570 of 2004:

2. Aggrieved by the order of the learned Subordinate Judge, Sankari in I.A.No.156 of 2004 in O.S.No.89 of 2003, dated 26.7.2004, this Civil Revision Petition has been filed.

3. The grievance of the petitioner in C.R.P.No.1570 of 2004 is that the application filed by the petitioner to amend the plaint recording the year of partition as 1980 instead of 1970, was dismissed on the ground that the same will alter the character of the suit. According to the learned Subordinate Judge, already the plaintiff's side, P.Ws.1 and 2 were examined and after that, the application has been filed for amending the plaint and if it is allowed, the entire evidence already taken will have to be altered and the further examination of witnesses is necessary.

4. The suit was filed in the year 2003 and after the closure of the plaintiff's side evidence and after examination of two witnesses on the side of the defendant, the petitioner/plaintiff has filed the application to amend the plaint. The amendment will alter the plea and the evidence of the witnesses, which cannot be allowed at this belated stage. Hence, there is no merit in C.R.P.No.1570 of 2004 and the same is accordingly dismissed. No costs. C.M.P.No.14593 of 2004 is closed.

C.R.P.(PD).No.1571 of 2004:

5. Aggrieved by the dismissal order dated 6.7.2004 of the learned Subordinate Judge, Sankari in I.A.No.120 of 2004 in O.S.No.5 of 2000, seeking for inclusion of one more property in the schedule to the plaint, this Civil Revision Petition has been filed.

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6. The question whether the property concerned in Ex.B-2 is ancestral property or self-acquired property of the first defendant, shall be decided by the trial Court based on evidence, while deciding the suit. Accordingly, C.R.P.No.1571 of 2004 is dismissed. No costs. C.M.P.No.14594 of 2004 is closed.

cs

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar.

To

1.The Subordinate Judge, Sankarai.
+One cc to Mr. P. Jagadeesan Advocate SR 50156
+ 2 cc to M/s Sarvabhuman Associates Sr 49744.
RA (co)
sg 20/01/07

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